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SPRINT/UNITED MANAGEMENT COMPANY
9 and SPRINT COMMUNICATIONS COMPANY, L.P.
(erroneously sued as SPRINT CORPORATION, a
10 SPRINT COMMUNICATIONS COMPANY, L.P.)

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 SAMUEL RUBIO, individually and on
15 behalf of all other similarly situated
16 employees, and on behalf of the general
public,

17 Plaintiff,

18 v.

19 SPRINT CORPORATION, a SPRINT
COMMUNICATIONS COMPANY, L.P.,
20 a Delaware Corporation;
SPRINT/UNITED MANAGEMENT
21 CO., a Delaware Corporation; and Does 1
through 20, inclusive,

22 Defendants.
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Case No. 2:17-cv-02231

**DEFENDANTS SPRINT/UNITED
MANAGEMENT COMPANY'S
AND SPRINT COMMUNICATIONS
COMPANY, L.P.'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA**

(Los Angeles County Case No.
BC643194)

[28 U.S.C. §§ 1331, 1367, 1441, 1446]

Compl. Filed: December 9, 2016
Amended Compl. Filed: January 25,
2017

1 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
2 OF CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that Defendants Sprint/United Management
4 Company and Sprint Communications Company, L.P. (erroneously sued as Sprint
5 Corporation, a Sprint Communications Company, L.P.) (collectively “Defendants”),
6 by and through their undersigned counsel, hereby effect removal of the above-
7 referenced action from the California Superior Court for the County of Los Angeles to
8 the United States District Court for the Central District of California. Removal of this
9 action is brought pursuant to 28 U.S.C. §§ 1331 and 1367, which gives this Court
10 original jurisdiction over “all civil actions arising under the Constitution, laws, or
11 treaties of the United States” and supplemental jurisdiction “over all other claims that
12 are so related to the claims in the action within such original jurisdiction that they
13 form part of the same case or controversy under Article III of the United States
14 Constitution. 28 U.S.C. §§ 1331; 1367(a). Specifically, removal of this action is made
15 on the following grounds:

16 **BACKGROUND AND TIMELINESS OF REMOVAL**

17 1. On December 9, 2016, Plaintiff Samuel Rubio (“Plaintiff”) filed a
18 Complaint against Defendants in the California Superior Court for the County of Los
19 Angeles. (Decl. of Harold M. Brody in Supp. of Notice of Removal (“Brody Decl.”) ¶
20 2, Ex. A.) On January 25, 2017, Plaintiff filed a First Amended Complaint (the
21 “FAC”). In his FAC, Plaintiff alleges causes of action for (i) failure to pay wages
22 under the Fair Labor Standards Act (“FLSA”); (ii) failure to provide meal and rest
23 periods; (iii) failure to pay wages and related overtime compensation; (iv) failure to
24 provide reimbursement for business expenses; (v) failure to provide proper itemized
25 statements; (vi) failure to pay wages due and payable twice monthly; (vii) failure to
26 pay all wages due upon ending of employment; (viii) violation of California Business
27 and Professions Code 17200, et seq. for unlawful competition and unlawful business
28 practices; and (ix) violation of the Private Attorneys General Act (“PAGA”). (Brody

Decl. ¶ 3, Ex. B.)

2. On February 21, 2017, Plaintiff served Defendants with a Summons and a copy of the FAC. (Brody Decl. ¶ 3.)

3. On March 22, 2017, Sprint/United Management Company filed an Answer to Plaintiff's FAC in the California Superior Court for the County of Los Angeles. (Brody Decl. ¶ 4, Ex. C.)

4. To be timely, a Notice of Removal must generally be filed within 30 days from defendant's receipt of an initial pleading or subsequent document from which the case's removability becomes ascertainable. *See* 28 U.S.C. § 1446(b). If defendant has not run afoul to either of these deadlines, defendant may remove at a later time. *Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d 1121, 1125 (9th Cir. 2013). Thirty days from February 21, 2017, is March 23, 2017. This Notice of Removal is being filed prior to the end of March 23, 2017, and is therefore timely.

5. Notice of this removal is being given both to the adverse party and to the state court pursuant to 28 U.S.C. § 1446(d). (Brody Decl., ¶ 5.)

VENUE

6. Pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a), venue lies in this Court because the Central District of California is the "district and division embracing the place where such action is pending," namely: the California Superior Court for the County of Los Angeles.

JURISDICTION

7. **Basis of Original Jurisdiction.** The above-captioned matter is a civil action over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States by virtue of Plaintiff's claim under the FLSA. *See e.g. Hernandez v. Martinez*, Case No. 12-CV-06133-LHK, 2014 U.S. Dist. LEXIS 112405, at *8 (N.D. Cal., Aug. 13, 2014) ("a FLSA cause of action raises a federal question, and the Court properly may exercise subject matter jurisdiction over the FLSA cause of action").

8. **Supplemental Jurisdiction.** As described above, in his FAC, in addition to the FLSA claim for failure to pay wages, Plaintiff alleges California state law claims regarding failure to pay wages and related overtime compensation, failure to provide meal and rest periods, failure to provide reimbursement for business expenses, and derivative claims for failure to provide proper itemized wage statements, failure to pay wages due and payable twice monthly, failure to pay wages upon ending of employment, unlawful competition and business practices, and violation of PAGA. Each of Plaintiff's state law claims is related to the FLSA claim such that they "form part of the same case or controversy under Article III of the United States Constitution," namely: Defendants' alleged failure to lawfully compensate Plaintiff during his employment. 28 U.S.C. § 1367(a); *see also Martinez*, 2014 U.S. Dist. LEXIS 112405, at *8 ("Because the state law claims [under the California Labor Code for overtime, minimum wage, and waiting time penalties] arise out of the same factual allegations as the FLSA cause of action, the Court exercises supplemental jurisdiction over those claims").

CONCLUSION

9. "[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Because Plaintiff's case is pending in the Los Angeles Superior Court and is a civil action arising under the laws of the United States, Plaintiff's case is removable to this Court. *See* 28 U.S.C. §§ 84(c)(2) (stating that the County of Los Angeles is in the Central District of California), 1331(a) (establishing original jurisdiction of civil actions arising under the law of the United States); 1367(a) (establishing supplemental jurisdiction over claims that are so related to the claim in the action within such original jurisdiction that they form part of the same case or controversy); and 1441(a) (establishing right to remove).

1 10. In the event this Court should have any questions about the propriety of
2 removal or may be inclined to remand this action, Defendants respectfully request that
3 the Court issue an order to show cause why the case should not be remanded and
4 afford the parties an opportunity to provide the Court with full briefing and argument.

5 **WHEREFORE**, Defendants hereby provide notice that the case originally
6 captioned as *Samuel Rubio v. Sprint Corporation et al.* and designated as case number
7 BC643194 in the California Superior Court for the County of Los Angeles, to this
8 Honorable Court, has been removed to the United States District Court for the Central
9 District of California for all further proceedings.

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11 Dated: March 22, 2017

PROSKAUER ROSE LLP
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Pietro A. Deserio
Tracey L. Silver
Elaine H. Lee

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14 By: /s/ Harold M. Brody
 Harold M. Brody

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